

**STATE OF MICHIGAN  
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

**Complaint Against:**

HON. LISA O. GORCYCA  
6th Circuit Court  
1200 N. Telegraph  
Pontiac, MI 48341

FORMAL COMPLAINT NO. 98

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**DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE**

At a session of the Michigan Judicial Tenure Commission  
held on November 14, 2016, in the City of Detroit.

**Present:**

Hon. David H. Sawyer, Chairperson  
Hon. Pablo Cortes, Vice-Chairperson  
Nancy J. Diehl, Esq., Secretary  
Hon. Monte J. Burmeister  
Hon. Lawrence S. Talon  
David T. Fischer  
Melissa B. Spickler

Pursuant to its authority under Article 6, §30 of the Michigan Constitution as amended, and MCR 9.203, the Judicial Tenure Commission of the State of Michigan ("Commission" below) files this recommendation for discipline against Hon. Lisa O. Gorcyca ("Respondent"), who at all material times was a judge of the 6<sup>th</sup> Circuit Court ("the Court") in the City of Pontiac, State of Michigan.

On or about July 1, 2016, the Commission received the findings of fact and conclusions of law from the Master appointed by the state Supreme Court to hear evidence in this matter. We have reviewed the relevant portions of the hearing transcript and exhibits, as well as the Master's Report, and have considered the written and oral arguments of counsel. We agree with the Master's conclusion that the Examiner established by a preponderance of the evidence that

the Respondent committed an act of judicial misconduct in open court on June 24, 2015. However, we further conclude that while her responses may have been inaccurate and somewhat misleading, Respondent did not make intentionally false statements in her answer to the formal complaint or during her testimony at the public hearing.

For the reasons stated below, the Commission recommends that the Supreme Court impose on Respondent a public censure and thirty-day suspension without pay from office.

## **I. Procedural Background**

On September 1, 2015, the Commission issued a 28-day letter to Respondent, seeking answers to questions about her conduct during proceedings in her courtroom occurring on June 24, 2015. Respondent replied by letter dated October 23, 2015, and the Commission issued a Formal Complaint on December 14, 2015 alleging that Respondent's conduct at a hearing in open court on June 24<sup>th</sup> constituted judicial misconduct, and that she had made false statements in her answer to the 28-day letter. Respondent filed her answer on January 21, 2016.

On January 22, 2016, the Michigan Supreme Court appointed Hon. Daniel P. Ryan to serve as Master, to conduct a public hearing inquiring into the allegations contained in the Formal Complaint. The Master held public hearings on May 27, May 31, and June 1, 2016. In his Findings of Fact and Conclusions of Law, issued on July 1, 2016, the Master concluded by a preponderance of the evidence that Respondent had committed acts of judicial misconduct as outlined in MCR 9.205 and Canons 1-3 of the Code of Judicial conduct, and made a materially false statement in her response to the Commission's 28-day letter.<sup>1</sup> The Commission heard objections to the Masters Report at a public hearing held on October 10, 2016.

## **II. Standard of Proof**

In all judicial disciplinary matters the Examiner bears the burden of proving the allegations contained in the Complaint by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350, 360; 582 NW2d 817 (1998). MCR 9.211(A). Although not required to accept the Master's findings of fact, the Commission may defer to the Master's superior ability to observe and assess the credibility and demeanor of witnesses. *In re Lloyd*, 424 Mich 514, 535; 384

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<sup>1</sup> The Master did not find persuasive the Examiner's allegation that Respondent made a second false statement in her answer to Question 25 posed by the Examiner, when she disputed the allegation that she decided to hold the children in the divorce case giving rise to this Complaint in contempt of court when they refused to speak or have lunch with their father. The Master determined that this allegation was a matter of semantics rather than falsehood, and the Commission concurs.

NW2d 9 (1986). We do, however, review the Master's factual findings and legal conclusions *de novo*. *In re Chrzanowski*, 465 Mich 468, 480-481; 636 NW2d 758 (2001).

### III. Findings of Fact

#### Factual Background

On December 17, 2009, a divorce action was filed in Oakland County Circuit Court seeking dissolution of the marriage between two Israeli citizens residing in the United States whose children enjoyed dual American and Israeli citizenship. The case --- captioned *Maya Eibschitz-Tsimhoni v Omer Tsimoni*, 6<sup>th</sup> Circuit Docket No. 09-788749-DM --- was assigned to Respondent, resulting in a judgement of divorce entered on August 8, 2011. As part of the judgment, the court awarded the parties joint custody of their three minor children, with physical custody given to the mother and parenting time awarded to the father. The ensuing years saw a long, complex, and acrimonious legal battle between the two parents, complicated by the international status of the parties.<sup>2</sup> The case has involved more than forty hearings and more than a hundred pleadings, many involving show-cause actions filed against the mother by the father, or the Guardian Ad Litem appointed on behalf of the children. Those hearings and pleadings, along with the many reports, findings, and recommendations filed by the Guardian Ad Litem with respect to the children, provide some historical context to Respondent's actions on June 24, 2015.

The divorce action resulted in dozens of separate orders, including about thirty relating to the three minor children. Most of these sought to facilitate meaningful parenting time between the children and their father. It appears that many of those orders may have been ignored or thwarted by actions of the mother, and by the children themselves. Throughout the underlying litigation, the dominant issue has been the children's failure to participate in parenting time with their father, and the father's claim that the mother has been orchestrating their alienation by ostracizing him in their eyes. Since its inception, the mother has been represented by sixteen attorneys, the father by four. The children have been clinically examined and evaluated by multiple therapists, some of which participated in supervising visitation with the father. Friend of the Court Family Counselor Tracey Rae Stieb has been involved with the case from the beginning; Attorney William Lansat was appointed Guardian Ad Litem for the three children on

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<sup>2</sup>Among the complicating factors was the fact that the father moved to Israel more than a year before the divorce action commenced. Ten months later, hoping for reconciliation, the mother and children moved there as well. However, the mother returned in December, 2009 to establish residency in Oakland County and filed the action for divorce.

August 25, 2010; and the current parenting time supervisor, Art Gallagher, has been involved with the case since 2013.

From 2010 until the events in question, Respondent spent five years sifting through various motions and complaints that the mother and children were failing to comply with the court's orders respecting parenting time for the father. Her orders reflected efforts to craft solutions to the resentments the children expressed towards their father. And she has indicated that her actions on June 24, 2015 were not undertaken lightly, but "emanated from years of frustration" stemming from the mother's continuing efforts to disobey court orders made in an effort "to unify the children with Defendant Father while maintaining a relationship with Plaintiff Mother."<sup>3</sup>

In August, 2014, the Guardian Ad Litem suggested the unusual step of having the father's parenting time take place in Judge Gorcyca's jury room. The parties and Respondent agreed to this remedy to help make sure that the children participated in parenting time with their father. On August 20, 2014 Respondent signed a consent order to that effect, directing that parenting time would take place on the following two days, August 21<sup>st</sup> and August 22<sup>nd</sup>.

On August 21, 2014, the mother and children appeared at Court. The children, sitting in chairs in the public hallway outside Judge Gorcyca's courtroom, refused to enter the jury room where their father and the parenting supervisor were waiting, and refused to participate in any parenting time with their father. Linking their arms together, they refused to look at or speak to anyone, or even to get up and enter the jury room. Notified of these developments, Respondent personally observed the children's actions through a window in the courtroom door. She summoned deputies from the Oakland County Sheriff's Office to her courtroom and asked for help from Assistant Oakland County Prosecutor Lisa Harris, whom Respondent believed was good at working with children. Harris, the Deputies, and the Guardian Ad Litem encouraged the children to visit their father in the jury room, explaining at some length the significance of the court's orders and why they had to be followed, but the children refused to respond to any of them. Among the consequences explained to the children was that a continuing refusal to comply could end in their placement in the Oakland County Children's Village, and their mother's placement in the County Jail.

Seeing that nobody seemed able to persuade the children to visit with their father, Respondent stepped into the hallway and told them that they had to follow the Court's orders. She explained that they and their mother could be found in contempt of court if they kept refusing to have contact with their father --- the contempt remedy having been suggested to her

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<sup>3</sup>Answer to 28-day Letter. (Examiner's Exhibit 69, pp 2-3.)

by Assistant Prosecutor Harris.<sup>4</sup> After Respondent's admonitions, the children complied, albeit reluctantly, and entered the jury room accompanied by Art Gallagher, Tracey Stieb, and William Lansat to begin parenting time with their father. Lansat and Stieb later reported to Respondent that the session had resulted in little progress. The children completed the visitation scheduled for the following day without further incident, although a report from the Guardian Ad Litem dated November 3, 2014 advised Respondent that the parenting session had not gone well.

Over the course of the next several months, the parties participated in a number of court hearings and stipulated orders, including several motions to show cause filed by the father, alleging violations of parenting time. One such motion, filed in March of 2015, culminated in the mother's agreement that she was in contempt of court. As a result, the mother was held in a holding room at the Courthouse for a few hours before being released and allowed to work at an animal shelter for two days in early April, 2015 as part of her contempt sanctions. The record also shows that on March 23, 2015, Respondent conducted a hearing into a request by the mother to suspend the father's visitation due to allegations that the father had assaulted one of his sons on March 23, 2015, and concluded that there was insufficient evidence to support the allegation.

#### **Proceedings of June 23 and June 24, 2015**

On June 23, 2016, the parties appeared before the Court for a review hearing to assess the mother's compliance with the Court's orders regarding parenting time. The father's attorney, and the parenting-time supervisor, told Respondent that although the children would appear as ordered for scheduled visits with their father, their participation in the visit was minimal. Respondent informed the mother that she would face additional jail time if this did not improve and, with the parties' agreement, ordered that the father would exercise his parenting time with nine-year old daughter NT and ten-year old son RT in the court's jury room the following day, June 24<sup>th</sup>. The order also stated that the father's parenting time with his other son, thirteen-year

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<sup>4</sup> Respondent testified at the disciplinary hearing that it was Assistant Prosecutor Harris who first suggested holding the children in contempt for their failure to comply with the court's orders during the visitation difficulties on August 21<sup>st</sup>, and recommended appointing attorneys for the children and holding the hearing on the spot. GAL Lansat recommended against sending the children to Children's Village, and advised giving it "one more shot." The judge decided at the time against holding the children in contempt, but appeared at the time to understand that it was the prosecutor who would be bringing criminal contempt charges. (Transcript of 6/1/16, pp 317-318). Respondent cites this as an example of judicial restraint under the trying circumstances of this case but, as the Master noted, it also suggests that Respondent understood the difference between civil and criminal contempt, and was aware that contempt proceedings in August would have been criminal in nature. See, REPORT OF MASTER, pp 9-10.

old LT, was to occur on July 14, 2016.<sup>5</sup> Having been advised that the father was about to leave on a two-week business trip, Respondent denied the mother's request to schedule visitation around a dermatologist's appointment scheduled for the following day, ruling that she was "not giving up one minute of dad's parenting time" because the mother would have "the rest of the summer to reschedule those appointments."<sup>6</sup>

On June 24, 2016, the mother brought her younger children, NT and RT, to court for their supervised visitation, as Respondent had ordered. Accompanying them was the oldest child, LT, whom the mother had brought with them to the courthouse. At about 9:00 a.m., RT commenced his parenting time with his father in Judge Gorcyca's jury room. During the course of the routine motion call for the day, Respondent's secretary informed her that parenting time for RT was not going well, because the child was not cooperating. Seeking guidance, Respondent summoned Tracey Stieb, the Friend of the Court Family Counselor, and they entered the jury room together to determine the nature of the problem.

Entering the jury room, Respondent saw RT seated in a chair, his legs placed over a second chair and his head tucked between his legs. Also in the room were the child's father, the parenting time coordinator Art Gallagher, and Guardian Ad Litem William Lansat. Respondent testified that the child was being theatrical --- breathing heavily, and sighing and panting, with a roll of toilet paper next to his shoe. The mother and the other children were not in the room at the time.

Respondent told RT to sit up and cease his behavior, and asked him what was wrong. The child responded that he did not want to have parenting time with his father; when asked why, he replied that it was because his father had assaulted him, to which Respondent replied that she had already had a hearing on the matter and found no evidence to support the allegation.<sup>7</sup> Asked if there was any other reason besides the alleged assault why he did not want to visit with his father, RT replied --- through what Respondent took to be "theatrical sobs" --- that "He didn't say happy birthday to me."

Upon hearing this, the father replied: "Honey, I did say happy birthday to you," and Respondent remarked that it was a good thing that he wanted more attention from his father, and that his father really wanted to be part of the boy's life. Tracey Stieb then talked to RT about

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<sup>5</sup> Examiner's Exhibit 41. To protect the privacy of the minor children, this report refers to them by their initials, rather than by name.

<sup>6</sup> Transcript of June 23, 2015, p 9.

<sup>7</sup> This was the hearing that took place on March 23, 2015, shortly before the mother was sent to jail for interfering with the father's visitation. Respondent later testified that the children themselves had never been brought into court on the record until the contempt proceedings of June 24, 2015. (Transcript of 5/31/16, pp 31-32).



making a fresh start with his father, to which he replied that did not want to do so because his dad had been mean; the boy refused to converse or interact any further with his father, or with the Judge. Respondent informed RT that there were serious consequences to a continuing refusal to obey the Court's orders, reminding him that it was not up to him --- or his siblings --- to decide whether to participate in parenting time with their father. She also reminded him of her admonition the previous August regarding potential consequences, including a potential placement at Children's Village.

After leaving the jury room, mindful of a statement RT made in the jury room that he always listened to his mother, Respondent wrote out a scripted statement for the mother to read aloud to her children in the jury room, in the presence of their father. The statement included assurances from the mother to the effect that their father loved them, would not harm them or her, that both parents wanted the father to be part of their lives, and that she wanted them all to spend time with him and have a good relationship with him.

After consulting with her attorney, the mother agreed to read the prepared statement. Though not there for parenting time that day, LT entered the jury room with her at about 11:30 a.m., and she read the statement to all three children, adding a few words in Hebrew. Respondent then left the jury room so that the family could talk amongst themselves, with help from Family Counselor Stieb and Guardian Ad Litem Lansat.

After the mother read her statement and left, the three children remained in the jury room with their father and Tracey Stieb. A short time later Stieb informed Respondent that the three children were still refusing to communicate with their father or participate in the parenting time scheduled for that day. Respondent informed the parties, their attorneys, and the Guardian Ad Litem that she was appointing attorneys for all three children and that, if necessary, she would be proceeding with an immediate contempt hearing after the children had the chance to consult with counsel. Anticipating that she might be sentencing the children for contempt, she called for an extra sheriff's deputy, and appointed counsel for each of the children: Attorney Jeffrey Schwartz, P-32076 for LT; Attorney Michael Dean, P-32631 for RT; and Attorney Karen Cook, P-26141 for NT. The attorneys had a half-hour or so to meet and confer with the three children.

### ***Contempt Hearing of LT***

Shortly after noon on June 24, 2016, Respondent commenced a contempt hearing against thirteen-year old LT, who had accompanied his mother to court that day while she took his younger brother and sister for their scheduled visitation with their father. Though expressing confusion about the proceedings, LT apologized to the court; he did, however, tell the court that he did not wish to apologize or speak to his father, because he had seen his father hit his mother

and believed him to be violent.<sup>8</sup> In response, Respondent informed LT that she was holding him in “direct contempt,” because she had ordered him to have a healthy relationship with his father, that she had witnessed his mother informing him that she (the mother) wanted him to talk to his father, that he was a “defiant, contemptuous young man,” and that he would be spending the rest of the summer in Children’s Village. Upon LT’s reply that he had done nothing wrong, Respondent told him that he had defied a direct court order; when LT’ responded that he thought there were rules against hitting people, the following exchange ensued:

THE COURT: ....[Y]ou’re supposed to have a high IQ, which I’m doubting right now because of the way you act, you’re very defiant, you have no manners, I ordered you to have a relationship...with your dad. I ordered you to talk to your father. Your mom told you to talk to your father. There is no reason why you do not have a relationship with your father.

Your father has never been charged with anything, your father’s never been convicted of anything. Your father doesn’t have a personal protection order against him. Your father is well liked and loved by the community, his co-workers, his family, his colleagues. You, young man, have got it wrong. I think your father is a great man who has gone through hoops for you to have a relationship with you. You are in contempt and you are going to live in Children’s Village. Remind me how old you are?

LT: Fifteen. [sic]<sup>9</sup>

THE COURT: You may stay in there until you graduate from high school.

[COUNSEL FOR MOTHER]: ...[J]ust for the record, I’d like to make clear that my client...did comply with the court’s directives. The court asked mother to speak with the children about...the necessity of the relationship with their father and I believe she did so to the court’s satisfaction....

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<sup>8</sup> LT was the second child that day to report either witnessing or suffering from an act of violence by the father. The only reply of Respondent apparent on the record before us was her testimony that she had informed RT earlier in the day that she had conducted a hearing into his allegation, and found it unsupported by the evidence. She did, however, testify that the contempt hearings on June 24<sup>th</sup> were the first time the children had appeared before her in court. See *supra*, note 7.

Other reports available to the Court from various mental health professionals suggested that the children’s refusal to participate in parenting time with their father was due to fear and mistrust. See, Examiner’s Exhibit 69, p 2.

<sup>9</sup> While the transcript records the answer as “fifteen,” LT’s date of birth was July 6, 2001, making him thirteen years old on the date of the hearing. The audio portion of the video record is somewhat indistinct, and is probably more accurately transcribed as “\*\*\*\*\*teen.”



THE COURT: Mother, I appreciate that you did say that.... It was probably way too late. Your children --- you need to do a research program on Charlie Manson and the cult that he has. Your behavior in the hall with me months ago, your behavior in this courtroom, your behavior back there, is unlike any I've ever seen in any 46,000 cases. You, young man, are the worst one. So you have bought yourself living in Children's Village, going to the bathroom in public, and maybe Summer school, but you and mom...well, I'll [put] it in here, you're not allowed to visit him, it's only your father and...anyone your dad chooses to bring in. And your attorney.

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This is over your dad's objections.... Obviously, it's over your mother's objections. Your dad --- I wanted to do this because of your horrific behavior a long time ago and your dad begged me not to.... So it was only because of your dad --- I would have switched custody and they would have appealed because I find it's against --- it's hurting --- you are so mentally messed up right now and it's not because of your father. And one day you are going to realize what's going on in this case and you're going to apologize to your dad.

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....We'll set a review hearing I guess what, September 1<sup>st</sup>? Unless you, for whatever reason, talk to your dad and your dad comes to me and says..."Judge Gorcyca...my son has seen the light and he's changed and...can you let him out? And he's --- wants to have a relationship with me." And then I'll do it....

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And if it doesn't happen --- actually, you know what, we're just going to set a review hearing when you're 18. Dad, if you ever think that he has changed and therapy has helped him and he's no longer like Charlie Manson's cult,<sup>10</sup> then you let us know and we can do it.<sup>11</sup>

At the conclusion of the hearing, Sheriff's deputies handcuffed LT, preparing to remove him from the courtroom, as Respondent continued berating him for his behavior. Respondent also denied the mother's request to have a moment to say goodbye to her son, before deputies took him away.

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<sup>10</sup> At this point, Respondent was making the circular gesture with her fingers that forms the basis for Count II of the Formal Complaint.

<sup>11</sup> Transcript of June 24, 2015, Show Cause Hearing, pp 6-10.

*Contempt Hearing of RT and NT*

After LT was removed from the courtroom, Respondent commenced contempt proceedings against ten-year old RT, and his sister, nine-year old NT.

Reading from a written note prepared with the help of counsel, RT apologized to Respondent and to his father, told his father that he enjoys soccer and hoped to be on a soccer team, and promised to communicate with him at future parenting sessions.

After hearing from RT, Respondent addressed his younger sister, NT. The nine-year old girl had been present in court during LT's contempt hearing, handcuffing, and removal from the court. She was visibly shaking and crying throughout the proceedings. Her attorney, Karen Cook, earlier had advised the Court that she did not have a "complete narrative" concerning what her client had done wrong, and that the girl did not seem to be cooperating with her. Respondent asked NT what she had to say; the nine-year old continued crying, leading Respondent immediately to conclude that she did not want to say anything. When RT attempted to pass his sister the note he had read to the Judge, Respondent intervened, stating:

No, no, NT, don't read what your brother wrote. You're your own person. Do you know what? I know you're kind of religious. God gave you a brain. He expects you to use it. You have a brain; you are not your brother. You are not your big, defiant brother who's living in jail. Do you want to live in jail? Just tell me this right now.<sup>12</sup>

After NT apologized to the court and stated that she would try to work with her father during his visits, Respondent told both children:

THE COURT: Well, you're going to stay here all day and it's going to be up to your dad. I'm going to see how you two act. Maybe the three of you should go to lunch in the cafeteria? If you have any hesitation at all you're living in Children's Village. You're living in Children's Village.

You know what that would do to your mother, going home, riding down the elevator without you? Can you guys think about someone besides yourself? You should be thinking about your father and what your father has gone through unnecessarily because of I don't know why? And...it's despicable to me what your father has gone through when he loves and...and he wants to be in your

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<sup>12</sup> Transcript of June 24, 2015, Show Cause Hearing, p 17.

life.... I'm so upset with you, I'm so upset with you, I'm even more upset with your brother, and I won't say what I think about your mother. I think your mom did something nice in the jury room for once. And I like your dad. And...you have me as your Judge for five and a half years.

How old will you be, NT? Let's see, you're going to be a teenager. You want to have your...birthdays in Children's Village? Do you like going to the bathroom in front of people?

[COUNSEL FOR NT]: She said no, thank you.

THE COURT: Is your bed soft and comfortable at home?

NT: Yes.

[COUNSEL FOR NT]: You need to talk. Speak up.

THE COURT: I'll tell you this, you two don't have a nice lunch with your dad and make this up to your dad you're going to come back here at 1:30 and I'm going to have the deputies take you to Children's Village.

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Dad, what do you think? What is your suggestion, dad? And I want you to know, I wanted to do this to you all many times, your dad said, "Don't Judge Gorcyca...." It was because of your dad that I didn't do it. Your mom didn't want me to either, but the ball is in your dad's court. Your dad is in charge. Unless you want to live in Children's Village. It's up to you. I have put other children in Children's Village. You guys can all hang out together.<sup>13</sup>

Having learned that his older brother had been taken to "jail," RT changed his willingness to participate and refused to engage in lunch and parenting time with his father, stating that he preferred to be with his older brother. Respondent replied that she would ensure that he would not be placed in the same "cell," promising to put in her order: "Stay away from your brother." At this point, NT stated that she no longer wanted to have lunch with her father either, prompting Respondent to laugh, and reply:

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<sup>13</sup> Transcript of June 24, 2015, Show Cause Hearing, p 17-19.

I've never seen anything like this. One day you can watch this video and realize that you two have been brainwashed. Your dad is a good man. Your dad is a good man who loves you. You have been brainwashed.... This is not normal behavior. Only --- no adult in this courtroom, except one, thinks this is normal. Every adult in this courtroom thinks you have been brainwashed. Your dad is a good man. And wipe that smirk off your face, [RT].

RT: It's not a smirk.

THE COURT: I don't know what that is. I've never seen anything like it. You're a defiant, contemptuous young man and the court finds both of you in direct contempt. You are both going to live in Children's Village. Your mother is not allowed to visit, no one on your mom's side is allowed to visit. Only your father and therapist and Mr. Lansat [the Guardian Ad Litem]. When you are read to have lunch with your dad, to have dinner with your dad, to be normal human beings, I will review this when your dad tells me you are ready. Otherwise, you are living in Children's Village 'til you graduate from high school. That's the order of the court. Good bye.<sup>14</sup>

Sheriff's deputies then placed both children in handcuffs, and took them from the courtroom.

### *Court Orders of Contempt*

At the conclusion of proceedings, Respondent entered orders finding all three children in contempt of court, and sentencing them to be taken to the Children's Village for an indefinite period of time.<sup>15</sup> The orders provided for therapy, and scheduled review dates for September 8, 2015, but indicated that the father could request an earlier review date if he determined that the children were complying with the Court's orders and were having a "healthy relationship" with him. The orders also contained provisions forbidding the children from having any contact with each other, or with the mother and her family, during their confinement.

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<sup>14</sup> Transcript of June 24, 2015, Show Cause Hearing, pp 21-22.

<sup>15</sup> Examiner's Exhibits 46-47. The handwritten orders themselves employ the verb "sentenced."

**Proceedings of July 10, 2015**

Following reports about the case in the national press, on July 10, 2015 Respondent held an emergency hearing at the request of Guardian Ad Litem William Lansat. Attorneys representing the parties and the children were present, and the father, who was in Israel at the time, participated by telephone.

Opening the hearing, Respondent read a lengthy statement criticizing the media for creating a hysteria over the case, claiming they had reported the story of the Tsimhoni children without getting the facts straight. Respondent noted that she had heard no objection to her actions at the earlier hearing, that no one had suggested an alternative to placing the children at Children's Village, that her actions were not intended as punishment, and that her primary concern had been to determine what was in the best interests of the children. She stated that her intent was to help the children develop a meaningful relationship with their father, and that placing them in Mandy's Place at Children's Village gave them a non-secure environment where "children from difficult circumstances receive outstanding residential mental health care and other services," as well as the chance to participate in fun activities such as field trips, and noted reports that the children were interacting with other children.<sup>16</sup>

Respondent vacated her earlier contempt orders and granted the request of the father, and the Guardian Ad Litem, to transfer the children from Children's Village to Camp Tamarack. She also ordered intensive reunification therapy and counseling for the family.

At the conclusion of the hearing, LT's Attorney Jeffrey Schwartz, with the concurrence of counsel for the other children, noted that the attorneys for the children had intended to request the appointment of appellate counsel to prosecute appeals of the Court's contempt orders, but that the trial court's actions had rendered an appeal moot.

**Respondent's Answer to the Commission's Twenty-eight Day Letter**

On September 1, 2015, the Commission issued a twenty-eight day letter to Respondent, outlining several troubling aspects of the case and asking for a written explanation. Among the inquiries was a question about a hand-motion Respondent made while speaking to the father on the record: while comparing the Charles Manson cult to the children in this case --- and speaking specifically about LT --- Respondent made a circular motion with her hand less than a foot away from her right ear or temple while making the following statement:

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<sup>16</sup> Transcript of July 10, 2016, pp 11-12.

Dad, if you ever think that he [ie, LT] has changed and therapy has helped him and he's no longer like Charlie Manson's cult, then you let us know and we can do it [ie, order his release from the Children's village].<sup>17</sup>

Respondent indicated that while she understood how it could be misunderstood, she believed herself to be referring to the young man's progress, rather than communicating a visual description of him as "crazy." In her testimony at the hearing before the Master,<sup>18</sup> she had no memory of making the motion, and was unaware that she had done so during the course of the hearing until she viewed the video recording of the proceeding. She also repeated her belief that this motion was not intended to describe LT as crazy, but to refer to the forward progress he might make through therapy. Viewing the video recording, and noting the many references to mental health issues she had made throughout the hearing, the Master concluded that this statement misrepresented her state of mind at the time, and was a knowingly false answer to the inquiry.

#### IV. Conclusions of law

State law holds each judge responsible for his or her own behavior, and responsible as well for the proper conduct and administration of the court over which the judge presides. MCR 9.205(A). In addition to their professional responsibilities as lawyers, MCR 9.205(B)(2), our Standards of Judicial Conduct also provide for various methods of judicial discipline --- ranging from censure to suspension to removal from office --- for various reasons, including "conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice." MCR 9.205(B); 1963 Const, Art VI, §30(2). Among the most serious offenses is "Misconduct in Office," which the Standards describe as including, but not limited to, persistent incompetence in performing judicial duties, persistent neglect in timeliness of performing those duties, treating people coming before the court unfairly due to race, gender, or any protected personal characteristic, misuse of the office for personal gain, and failing to cooperate with a reasonable request by the Commission in its investigations.

Michigan's Code of Judicial Conduct also provides guidance to judges, and this Commission, in determining the proper conduct of our state's judicial officers. It admonishes judges to remember that the judicial system is for the benefit of the litigants and the public, not the judiciary, and that high standards of personal and professional conduct are essential to

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<sup>17</sup> Transcript of June 24, 2016, p 10.

<sup>18</sup> Transcript of June 1, 2016, pp 340-342.



maintain public confidence in our system of justice. And it sets forth many expectations for the state's judiciary, including several that are pertinent to the matter before us:

A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Code of Judicial Conduct, Canon 2A.

A judge should be faithful to the law and maintain professional competence in it... Code of Judicial Conduct, Canon 3A(1)

A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals with in an official capacity.... Code of Judicial Conduct, Canon 3A(3)

A judge should adopt the usual and accepted methods of doing justice; avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing and endeavor to conform to a reasonable standard of punishment.... Code of Judicial Conduct, Canon 3A(9)

In addition to expectations the law imposes on judicial officers, judges also bear the ordinary responsibility of attorneys. These duties subject lawyers to discipline for conduct that exposes the legal profession or its courts to "obloquy, contempt, censure, or reproach"; conduct contrary to "justice, ethics, honesty, or good morals"; and conduct violating "the standards or rules of professional conduct established by the Supreme Court." MCR 9.104(2)-(4).

This case revolves around Respondent's decision to hold three children in contempt of court for declining to participate in parental visitation with their father to the Court's satisfaction. Generally a last resort, contempt is among the most powerful tools available to a judge, and not without limitations: as our Supreme Court noted in *In re Hague*, 412 Mich 532, 555; 315 NW2d 524 (1982), "[t]he contempt power is awesome and must be used with the utmost restraint." Thus, judges have the responsibility to use the power judiciously, and only in circumstances where the contempt is "clearly and unequivocally shown." *In re Contempt of Auto Club*, 243 Mich App 697, 708; 624 NW2d 443 (2000).

Penalties for contempt range from fines to imprisonment for up to 93 days, although a contempt consisting of acts or duties within the contemnor's power to perform may be purged upon performing the required act. MCL 600.1715. And the law guarantees that someone facing charges of contempt will be entitled to whatever procedural safeguards due process may require. See, eg, *People v Nowicki*, 384 Mich 482, 485-486; 185 NW2d 30 (1971); *In re Contempt of Auto Club*, 243 Mich App at 715-718. Moreover, given its potential for abuse, the limits of the contempt power confine it to "the least possible power adequate to the end proposed," *People v*

*Kurz*, 35 Mich App 643, 656; 192 Nw2d 594 (1971), and abuse of the contempt power constitutes judicial misconduct, which may warrant imposing disciplinary sanctions on the judge. *In re Hague*, 412 Mich at 555; *In re Del Rio*, 400 Mich 665, 692-694; 256 MW2 727 (1977).

### ***Count I -- Misconduct of June 24, 2015***

Respondent is correct in arguing that mere legal errors in the contempt proceedings are not grounds for a finding of judicial misconduct.<sup>19</sup> Respondent's misconduct transcends any legal error made during the proceedings before her on June 24, 2016;<sup>20</sup> her misconduct was using

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<sup>19</sup> MCR 9.203(B). However, the fact of an appellate remedy does not preclude a finding of judicial misconduct. See, eg, *Matter of Laster*, 404 Mich 449, 461-462; 274 NW2d 742 (1979).

<sup>20</sup> This is not to say, however, that the Commission finds Respondent's use of the Court's contempt power to have been proper. In addition to the knotty procedural questions concerning the distinction between criminal and civil contempt, the fact that Respondent largely delegated the question determining whether the children had purged the contempt to the father, the fact that LT's visitation was not scheduled for another three weeks, the restrictions on visitation, and the abbreviated time between the appointment of counsel and the contempt hearing, there were several options open to her in dealing with misbehavior by the children, who were not litigants before the Court --- the actual litigants being the parents, who had largely escaped any sanctions by the court only to have them visited upon their children. Thus, the children were made to bear the burden of visitation orders which had imposed affirmative obligations on the part of the adult party-litigants. Assuming that the Court found fault lying with the children rather than the parents, those options would have included filing a juvenile petition under MCL 712A.2(a)(3) to have the children deemed "incorrigible" for failing to obey their parents. However, as counsel for Respondent acknowledged during oral argument to the Commission, there was no testimony from the mother to the Court that her children were refusing her lawful commands to engage in visitation with their father. Use of the contempt power seems a particularly ill-suited tool to foster reconciliation between children and an estranged parent.

In addition, while there appears to be no direct precedent in Michigan, other states considering similar issues have concluded that holding a child in contempt of court is beyond the authority of a court. In *In re Edwin G*, 296 AD2d 7; 742 NYS2d 53 (2002), for example, New York found that their Family Court had no authority to hold an incorrigible 15-year old in contempt of court for disobeying the court's order not to abscond, where state law provided alternative remedies. And of particular interest is the Alabama case of *Shellhouse v Bentley*, 690 So 2d 401 (Ala App, 1997): in that case, the non-custodial mother had sought to hold the father in contempt of court for failing to allow visitation, and issued an order threatening the child --- who expressed a strong aversion to visitation --- with contempt of court for failing to engage in visitation. The Alabama Court of Appeals found that the father's obligation ceased upon delivering the child to the scheduled place of visitation, and that the trial court was without authority to cite the child for contempt of court for refusing to participate. See also, *Minz v Minz*, 64 NC App 338; 307 SE2d 391 (1983)(Violation of due process to threaten custodial parent with contempt for refusal of child to visit noncustodial parent).

Ironically, under the Mental Health Code, nine-year old NT would have been deemed "incompetent" for purposes of imposing legal sanctions for her actions, due to her youth. And while her older brothers would have been presumed competent, Respondent's professed belief that ten-year old RT was being unduly influenced by thirteen-

the awesome judicial power of contempt to vent her frustration on three children because she wanted them to have a better relationship with her father. Her intemperate language was not only counterproductive in accomplishing what she wanted; it may well have been misconduct even if directed against the adults.<sup>21</sup> But the fact remains that she was targeting children, who found themselves in the middle of a protracted legal controversy that was not of their own making. While dealing with children poses unique problems for any adult, it makes her actions from the bench even more unacceptable, for it strikes at the heart of the proper role of a judge when dealing with children: to be a safe haven and refuge rather than a bully, a source of guidance rather than just another grown-up barking commands that they cannot understand.

The Commission is not privy to everything that occurred during the pendency of the underlying divorce action that gave rise to this Complaint. We can only rely on the record before us. And the record of the first contempt proceedings shows a polite young man apologizing to the court for anything he may have done to offend the judge, and calmly explaining to the Court the reasons for his not wanting to interact with his father: he saw his father hit his mother, explains the young man, and so the young man does not want to talk to him. Rather than addressing his concerns, the judge berates him for not having “a healthy relationship” with the father as the court had ordered, insults his intelligence, tells him that he has no manners, and tells him that he will be confined to the Children’s Village until he turns eighteen. Missing from the judge’s actions is any recognition that the order she signed the previous day did not order the young man to have visitation with his father for another three weeks, and that her order did not specify the quality of the visitation --- something that no mere court order could ensure.

The record of the second contempt proceeding shows a terrified nine-year old girl who had been in court to see her oldest brother taken away in handcuffs, trembling and in tears throughout the proceeding, appearing beside her ten-year old brother. The boy reads a written statement, apologizing to the court, promising to communicate with his father in the future, and telling him about his interest in soccer. On prompting from counsel, the boy agrees to start communicating with his father in order to start building a relationship. Initially too frightened to speak --- and prevented by the judge from using her brother’s written statement as a guide, amidst the judge’s description of her oldest brother as “your big defiant brother who’s living in jail” --- on prompting by counsel the girl’s response to the judge is: “I’m sorry, I’ll try to work with my father at visits.” The judge’s response is to threaten the children with Children’s Village if things didn’t go well with their father, and tell them that what they were putting their father through was “despicable.” Having learned that his older brother was “in jail” apparently prompted the boy to change his mind and choose to follow his brother, leading the girl to do so

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year old LT, who was engaging in what the Court described as “Manson Cult” behavior, may well have sufficed to raise the issue of competency for both children, if anyone had thought to do so. MCL 330.2062(1)-(3).

<sup>21</sup> Cf, *In re Post*, 493 Mich 974; 830 NW2d 365 (2013).

as well. The judge's response is to tell both children they have been "brainwashed," and that they would remain in Children's Village until they graduate from high school, or their father tells the judge that they are "ready" to be released.

The Commission appreciates the frustrations of a judge confronted with the intractable problem of trying to bring children together with an estranged parent. As with King Canute's attempts to command the tide, however, it is beyond the capacity of a judge to change the hearts of those coming before her simply by issuing orders. The Commission has no doubt that Respondent is an otherwise exemplary judge who was acting from the best of motives, and that her actions were prompted by frustration rather than malice. She crossed the line from legal error to misconduct when those frustrations led her to abuse three children in the middle of the war zone that their parents' divorce case had become. The language she used was insulting, demeaning, and humiliating; and her use of the contempt power to direct her frustrations at the children for their own emotional turmoil was a misuse of the Court's most powerful tool. Both actions constituted misconduct.

As a result, the Commission finds that Respondent's actions resulted in the following acts of judicial misconduct occurring on June 24, 2015:

- Respondent held LT in contempt of court on June 24, 2015 for refusing to engage in parenting time with his father on that date, when the only order applying to him called for him to visit with his father on July 14, 2015.
- Having ordered three children confined to Children's Village for contempt of court, Respondent delegated to a third party the discretion to determine when they had purged themselves of contempt.
- Respondent failed to act in a patient, dignified, and judicial manner during contempt proceedings against three children, ages nine, ten, and thirteen, engaging in insulting, demeaning, and humiliating comments and gestures directed toward them far exceeding the proper bounds of stern language permitted to a judge.

Based upon the evidence, the Commission concurs with the Master's conclusions that Respondent's actions constituted violations of the following:

- (1) Misconduct in office, as defined by Const 1963, Article 6 §30(2), and MCR 9.205.
- (2) Conduct clearly prejudicial to the administration of justice, as defined by Const 1963, Article 6 §30(2), and MCR 9.205.

- (3) Failure to establish, maintain, enforce, and observe high standards of conduct needed to preserve the integrity and independence of the judiciary, contrary to Canon 1 of the Code of Judicial Conduct.
- (4) Irresponsible and improper conduct serving to erode public confidence in the judiciary, contrary to Canon 2A of the Code of Judicial Conduct.
- (5) Conduct providing both the appearance and substance of impropriety, contrary to Canon 2A of the Code of Judicial Conduct.
- (6) Failure to respect and observe the law, and to conduct herself in a manner promoting public confidence in the integrity and impartiality of the judiciary, contrary to Canon 2B of the Code of Judicial Conduct.
- (7) Failure to be faithful to and maintain professional competence in the law, contrary to Canon 3A(1) of the Code of Judicial Conduct.
- (8) Failure to be patient, dignified, and courteous to those coming before the Court in an official capacity, contrary to Canon 3A(3) of the Code of Judicial Conduct.
- (9) Failure to adopt the usual and accepted methods of justice, specifically including the failure to avoid the imposition of humiliating acts of discipline not authorized by law, and failing to endeavor to conform to a reasonable standard of punishment, contrary to Canon 3A(9) of the Code of Judicial Conduct.
- (10) Conduct exposing the legal profession or courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2).
- (11) Conduct contrary to justice, in violation of MCR 9.104(3).
- (12) Conduct violating the rules or standards of professional conduct, in violation of MCR 9.104(4).
- (13) Failure to take personal responsibility for her own behavior, and for the proper conduct and administration of her courtroom, contrary to MCR 9.205.
- (14) Failure to exhibit due diligence to ensure that her rulings on contempt conformed to the controlling law, MCR 3.606 and MCL 600.1701 *et seq.*

### *Count II --- Misrepresentation*

In the rarefied world of logic, if any part of a statement is not true, the entire statement is deemed "false." In the practical realm of the law, a "falsehood" requires more.

For our purposes, it is the Commission's conclusion that a false statement requires the speaker's knowledge that the statement is false and intended to deceive. The fact that a statement may be incorrect does not, by itself, render the statement "false" within the context of a legal proceeding. It may be discredited, or deemed unworthy of belief, but given the limits of human memory and perception, as well as the limitations of language, it would be unfair to impute motives of deception or falsehood to everyone who says something that someone else finds incredible, or that proves to be incorrect.

Selective memory does not equal falsehood; incorrect memory does not equal falsehood; imprecision in expression does not equal falsehood; even an answer that one chooses to disbelieve does not equal a falsehood.

In this case, the only real fact contained in Respondent's response to the question about her "circular gesture" was her "belief" about what she intended. Her subsequent testimony at the hearing before the Master clarified that she did not recall making the gesture and was unaware she had done so until she viewed the video recording of the proceedings, but that she felt obligated to provide her best guess about what she intended. If this had jogged her memory, she might have been able to recall why she had done so; as it did not, her ability to interpret the gesture was no better than anyone else's --- except, perhaps, for the unfortunate fact that she had a stake in how the gesture was construed.

Undeniably, such a personal interest may well have affected her ability to interpret her actions. But as long as she was candid about her lack of memory, we cannot deem speculations about her motives or intentions in performing actions months earlier --- actions that she could not even recall --- to be actionable falsehoods. The entire video is replete with images of Respondent using her hands as visual supplements to her words during the course of the hearing, and it is entirely credible that she did not recall making the gesture. While her initial response could have been better expressed, and her subsequent explanation is colored by self-interest, we cannot in good conscience find it to be "false" within the meaning of the law, in that it did not constitute intentional deception.

However, the simple answer --- "I do not remember what was in my mind at the time" --- would have been both accurate and helpful. The answer given, while not actionably false, was sufficiently misleading to require a hearing to discover the facts, a facet of the hearing that the simpler answer would have prevented.



Accordingly, we conclude that the Examiner failed to prove the misconduct alleged in Count II by a preponderance of the evidence. However, Respondent's answer to the 28-day letter was misleading enough to justify the imposition of costs under MCR 9.205(B).

## V. Disciplinary Analysis

As our Supreme Court has noted, "the purpose of judicial discipline is not to punish, but to maintain the integrity of the judicial process." *In re Moore*, 464 Mich 98, 118; 626 NW2d 374 (2001); *In re Chrzynowski*, 465 Mich 468, 488; 363 NW2d 758 (2001). The law recognizes that judges are as imperfect as any human beings, but by accepting a judicial office a judge's actions come to reflect on the entire judiciary. While errors and missteps are inevitable in any human institution, we cannot avoid confronting those rare instances in which a judge oversteps the acceptable bounds of judicial conduct. If unaddressed, these acts of misconduct would threaten to undermine public confidence in our courts, and in our entire system of justice.

To foster consistency in cases of judicial misconduct, our Supreme Court has outlined several factors for the Commission to consider. In the context of a given case, these guidelines can help determine an appropriate sanction. As a result, our recommendation is based on our assessment of the evidence before us, in light of the factors set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (1999), and other relevant considerations:

The *Brown* factors:

- (1) **Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.**

In this case, the conduct at issue stems from problems relating to seeking compliance with the court's orders in a single case that presented unique difficulties for the judge. In light of Respondent's exemplary record, the Commission views her conduct as an isolated instance.

Nevertheless, Respondent does not appear to have recognized that her acts far exceeded the bounds of proper judicial conduct. In particular, failing to perceive that her actions in bullying young children in open court exposed the justice system to condemnation and ridicule suggests that it is a pattern that may repeat itself in the future, in the absence of any corrective action.

- (2) **Misconduct occurring on the bench is usually more serious than the same misconduct off the bench.**

The conduct at issue occurred while the judge was on the bench, interacting with

litigants, their children, and attorneys in open court. This makes the incident more serious than one occurring off the bench in the judge's capacity as a private citizen, or in chambers, away from public view.

- (3) Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.**

The public expects and is entitled to be treated with courtesy and respect by members of the judiciary. A lack of proper judicial temperament, or indications of favoritism emanating from the bench, erodes public confidence in our system of justice and calls into question the impartiality of our courts. Affirmative actions of abusive conduct on the bench also inhibit the openness and candor from litigants and attorneys that our system of justice needs to function properly. And actions that target or bully young children call into question the ability of the judicial system to act in their best interests. Accordingly, the misconduct at issue was prejudicial to the administration of justice.

In this case, the public was ill-served by the spectacle of a judge verbally berating and ridiculing young children in open court, and appearing to favor their father over their mother. It was prejudicial to both the administration of justice and the appearance of propriety. The ensuing misuse of the Court's contempt power only exacerbated the misconduct.

- (4) Misconduct that does not implicate the actual administration of justice, or its appearance of propriety, is less serious than misconduct that does.**

The conduct at issue stems from the judge's actions during litigation of a contentious divorce action. As a result, it affected the actual administration of justice.

- (5) Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.**

Respondent's actions appear to have been contemplated for nearly a year, and she had the chance to reflect upon her actions during the course of a hearing that lasted nearly an hour. Moreover, during her testimony before the Master --- and again, during counsel's oral argument before the Commission --- the judge expressed no second thoughts about the wisdom or propriety of her actions. Though the idea of holding the children in contempt appears to have been in

Respondent's mind for quite some time, the video record of the proceedings suggests that her anger was a spontaneous reaction to her continued frustration and inability to bring order to a dysfunctional relationship between the father and his children. The fact that her actions on the day in question appear entirely out-of-character appears to confirm the fact that this is an isolated instance of a judge losing her temper, rather than a case of a chronically abusive judge.

However, an ill-conceived and spontaneous action often leads to efforts to contain or repair the damage, after tempers have cooled enough to permit time to reflect. Unfortunately, in this case, nothing of the kind happened, suggesting that Respondent may have no real insight into the nature of her misconduct.

- (6) Misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery.**

While persistently abusive conduct from the bench can impede the truth-finding process, the isolated nature of misconduct in this case limits any ensuing harm to the individual case in question. Respondent's actions in the case targeted what she perceived to be defiance of the court's orders, and did not intentionally interfere with the fact-finding process in the underlying litigation.

Nevertheless, by failing to respond to the children's allegations of violence exhibited by their father, or permitting them freely to articulate their reasons for their behavior on the record the first time they appeared in court before her, Respondent's misuse of her contempt power prevented her from taking the children's perspective into account. Whether or not these allegations were factually correct, Respondent's failure to give them the chance to convey information to the Court impeded the Court's ability to determine the best interests of the children before it, and the best course of action to help resolve a difficult case.

- (7) Misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.**

The misconduct at issue targeted no particular class of citizens.

It did, however, target children.

Applying the *Brown* factors:

The Supreme Court has had the sad occasion to provide examples of what it deems appropriate judicial sanctions, depending upon the gravity of the offense, and the past history of the judge. Several of these cases seem relevant to our determination of an appropriate sanction in this case:

In *In re Moore*, 464 Mich 98; 626 NW2d 374 (2001), the misconduct consisted of a persistent and habitual pattern of intemperate comments and insulting language, and a persistent lack of proper judicial demeanor. Many past instances of similar behavior had resulted in admonitions and appellate reversals, but did not lead to altered conduct on the bench. The Court ordered the respondent judge suspended for six months without pay.

In *In re Morrow*, 496 Mich 291; 854 NW2d 89 (2014), the misconduct consisted of the judge's routine disregard of controlling law in multiple cases, stemming from his subjective attempts to "do justice" in the cases before him. Noting that he was not seeking any sort of personal benefit from his misconduct, the Court deemed a suspension of sixty days to be a sufficient sanction.

In *In re Post*, 493 Mich 974; 830 NW2d 365 (2013), the judge's misconduct consisted of holding an attorney in contempt of court for asserting what the attorney believed to be his client's Fifth Amendment right against self-incrimination. During the course of the proceedings, the judge conceded that his intemperate remarks were improper, and served to erode public confidence in the judiciary. The Court determined that the appropriate sanction was a thirty-day suspension.

In *Matter of Hocking*, 451 Mich 1, 13; 546 NW2d 234 (1996), the judge engaged in a caustic and abusively confrontational exchange with the attorneys at a sentencing hearing. Noting that "[a] judge's mode of articulating a basis for decision may exhibit such a degree of antagonism or other offensive conduct that a single incident would indicate that impartial judgment is not reasonably possible," and in that event, "the judge has prejudiced the administration of justice because the conduct undermines public confidence in the impartiality of justice," the Court found a three-day suspension to be sufficient.

Lastly, in *In re Servaas*, 484 Mich 634; 774 NW2d 46 (2009), the judge's misconduct consisted of placing lewd drawings on notes in the court file, and making demeaning remarks about the "small breast size" of a female staffer. The actions were, however, following by an immediate apology, for behavior described as "aberrational." In this case, the Court concluded, the misconduct warranted no more than a public censure.

Applying the lessons of those cases here, it appears that a persistent pattern of abusive misconduct, as in *Moore*, will justify a six-month suspension, while a persistent disregard for the controlling law stemming from idealistic motives can justify a suspension of at least sixty days, as we learned from the decision in *Morrow*. At the other end of the disciplinary spectrum, the lessons of *Hocking* and *Servaas* suggest that isolated cases of personal or professional misbehavior may warrant a short suspension or censure, particularly if the harm extends no further than offending the personal sensibilities of the affected parties.

However, as we learn from *Post*, the combination of legal harm and intemperate behavior seems to call for more than a minimal sanction. Here, as in *Post*, the judge crossed the line from proper demeanor to caustic abuse; and here, as in *Post*, the judge had misused the contempt power during the course of a heated exchange in open court. In this case, both Respondent's insulting and demeaning language, and subsequent finding of contempt, were not only abusive, but directed at children, rather than at a trained, albeit inexperienced attorney.<sup>22</sup> If anything, this makes the misconduct worse than the judge's actions at issue in *Post*, which resulted in the judge's suspension for office for thirty days.

Were it not for Respondent's exemplary record, the Commission might be inclined to recommend a lengthier sanction for the misconduct in this case. Under the unique circumstances of this case, however, we believe a thirty-day suspension without pay, and the ensuing public censure, to be sufficient.

## **VI. Costs, Fees, and Expenses**

As noted above, Respondent's response to the Commission's 28-day letter contained a misleading answer, requiring an evidentiary hearing to correct. Accordingly, pursuant to MCR 9.205(B), the Commission requests that Respondent be ordered to pay the costs, fees, and expenses incurred by the Commission in prosecuting the Complaint. As the Examiner has submitted an affidavit showing costs, fees, and expenses incurred by the Commission in the amount of \$12,553.73, the Commission requests an assessment for that amount.

## **VII. Conclusions and Recommendations**

The Commission concludes that Respondent committed judicial misconduct by abusing her judicial powers of contempt on June 24, 2015 in ordering three children to be confined at the Oakland County Children's Village for declining to engage in visitation with their father,

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<sup>22</sup>In addition, the attorney cited for contempt in *Post* spent only a few hours in the lockup at the County jail before a circuit judge reversed his conviction; the children in this case were confined for seventeen days.

abusing her contempt powers out of frustration at being unable to convince them to visit with their father, and by using insulting, demeaning, and humiliating language directed at the three children during proceedings in open court. For these acts of misconduct, the Commission recommends that Respondent be publicly censured and suspended from office without pay for a period of thirty days.


In addition, the Commission finds that Respondents answer to their 28-day letter was misleading, which resulted in the need for an evidentiary hearing to uncover the facts. As a result, the Commission recommends that the Court order Respondent to pay an assessment of costs, fees, and expenses in the amount of \$12,553.73





# JUDICIAL TENURE COMMISSION


  
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Chairperson

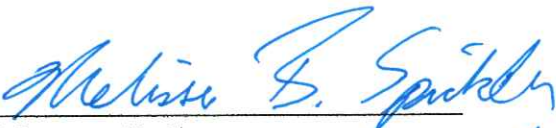

  
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DAVID T. FISCHER  
per authorization  
  
11-14-16

  
Hon. LAWRENCE S. TALON

  
MELISSA B. SPICKLER  
per authorization  
  
11-14-16

Commission members Thomas J. Ryan, Esq. and the Hon. Nanci J. Grant, took no part in the consideration or decision of this matter.